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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,370	01/15/2002	Dennis J. Michaelson	STES 105	7535
21658	7590	06/06/2006	EXAMINER	
DYKAS, SHAVER & NIPPER, LLP P.O. BOX 877 BOISE, ID 83701-0877			CHORBAJI, MONZER R	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,370

Applicant(s)

MICHAELSON ET AL.

Examiner /

MONZER R. CHORBAJI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 25-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 25-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This final action is in response to the amendment received on 03/09/2006

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 25 and 27-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 25, applicant refers to first and second positions without providing spatial configuration that explains what each position represents. The disclosure as a whole does not explain such positions. Upon evaluating the disclosure one of ordinary skill in the art would not be able to construe what applicant mean by first or second positions. The same applies to claim 30. However, in examining instant claims 25 and 30, first position will be considered to represent closed container and second position represents open container with its cover laying flat on the same surface as the bottom.

In claims 27-29, it is not clear to what dimension of the hinge plate applicant is referring. Is applicant is referring to the width or the length of the hinge plate? The disclosure as a whole does not indicate what dimension of the hinge plate is intended in such claims and one of ordinary skill in the art upon evaluating the entire disclosure would not be able to construe to what dimension of the hinge plate applicant is referring. However, in examining instant claims 27-29, the examiner will assume that applicant is referring to the length and width of the hinge plate.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 25 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Wittrock et al (U.S.P.N. 5,482,067).

Regarding claim 25, Wittrock discloses a double hinge (figure 2:40, 14 and 12) for connecting top cover (figure 2:12) to a cassette (figure 2:14) having opposing side bottom and end walls. The double hinge includes a first hinge (figure 2:62) pivotally to side wall (unlabeled end wall of cassette 14 in figure 2) and also pivotally connected to hinge plate (figure 2:42), hinge plate connected between first and second hinges (figure 2:62, 42 and 60) second hinge pivotally connected to hinge plate (figure 2:60 and 42) and to the top cover (figure 2:60 and 12). Wittrock teaches that the hinge allows the top cover to lay flat upon the same surface that the bottom wall also rests upon (figure 2:14 and 12). In addition, Wittrock discloses two positions where the first position (closed position) is shown in figure 4 and the second position (open position) is displayed in figure 2. In this second position, the first hinge and the second hinge are in the same vertical plane upon rotating figure 2 of Wittrock. See MPEP 2114 where the manner of operating the device does not differentiate apparatus claim from the prior art.

Regarding claims 30-32, Wittrock double hinge (figure 2:42) is capable of making contact with portions of either bottom (figure 2:14) or top (figure 2:12) upon full rotation

of either of first hinge (figure 2:62) or second hinge (figure 2:60) where the top part is folded underneath the bottom part. The top of Witrock's container has latch means (figure 1:70 and 72).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittrock et al (U.S.P.N. 5,482,067) in view of Dabich (U.S.P.N. 4,535,908).

Regarding claim 1, Wittrock discloses a double hinge (figure 2:40, 14 and 12) for connecting top cover (figure 2:12) to a cassette (figure 2:14) having opposing side bottom and end walls. The double hinge includes a first horizontally oriented hinge (figure 2:62) interconnected to the end wall (unlabeled end wall of cassette 14 in figure 2) and the top cover (figure 2:12, 62 and 42) dividing the end wall (unlabeled end wall of cassette 14 in figure 2) into upper (figure 2, unlabeled upper part of bottom 14) and lower (figure 2, unlabeled lower part of bottom 14) halves and a second hinge (figure 2:60) oriented in juxtaposed relationship to the first hinge (figure 4 where two unlabeled hinges are in juxtaposed relationship to one another). The Wittrock reference teaches that the hinge allows the top cover to lay flat upon the same surface that the bottom wall also rests upon (figure 2:14 and 12). However, Wittrock fails to teach that the second hinge divides the top cover into two interconnected pieces; however, Dabich, which is in the art of designing lids teaches the use of a double hinge lids where the second hinge (figure 6:30) divides the top cover into two interconnected pieces (figure 6:18 and 20). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the structure of the Wittrock reference by including an additional double hinge closing mechanism that provides two interconnected lids as taught by the Dabich reference since double hinge mechanism results in opening the inner lid with one hand by most users (col.4, lines 27-33).

Regarding claim 26, Wittrock fails to teach that the hinge plate is a portion of the top of the container. Dabich teaches the use of a double hinge lids where the second hinge (figure 6:30) divides the top cover into two interconnected pieces (figure 6:18 and 20) where piece 18 in figure 2 represents a hinge plate, which is part of the top.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the structure of the Wittrock reference by including an additional double hinge closing mechanism that provides two interconnected lids as taught by the Dabich reference since double hinge mechanism results in opening the inner lid with one hand by most users (col.4, lines 27-33).

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wittrock et al (U.S.P.N. 5,482,067) as applied to claim 25 and further in view of Kirksey (U.S.P.N. 4,576,281).

Wittrock fails to teach that the length of the hinge plate is equal in length of one of the opposing sides; however, Kirksey, which is in the art of designing hinged closing/opening structures, teaches that the hinge plate (figure 1:36) is equal in length to the unlabeled opposite front end of wall 28 in figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to fully lengthen the hinge plate of Wittrock from one end of the container to the other as taught by Kirksey (figure 2:36) so that better alignment of the top and bottom parts is obtained during the handling of container.

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10. Claims 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittrock et al (U.S.P.N. 5,482,067) as applied to claim 25 and further in view of DeCoster (U.S.P.N. 4,723,693).

Wittrock fails to teach that the width of the hinge plate is equal to the width of one of the opposing sides or that the width of the hinge plate is equal to one half of the width of one of the opposing sides; however, DeCoster, which is in the art of designing double hinging closures, teaches that the width of hinge plate 54 in figure 4 is equal to the width of the bottom of container 12 in figure 1. This bottom is not shown in the drawings.

Depending on the depth of the bottom of the container (figure 1:12), the width of the hinge plate is capable of being equal to one half of the width of this bottom. As a result, it would have been obvious to one of ordinary skill in the art at the time the invention was made to shorten the width of Wittrock's hinge plate to the same dimension as the container's width as taught by DeCoster so that Wittrock container can handle much smaller medical and dental items.

Response to Arguments

11. Applicant's arguments filed on 03/09/2006 have been fully considered but they are not persuasive.

On page 7, of the Remarks section applicant argues that, "The Dabich reference is not within the field of Applicant's endeavor and not reasonably pertinent to the particular problem with which the inventor was concerned." The examiner disagrees. Both the instant claims and the Dabich reference are in the art of designing double hinge closing structures and both are concerned with building such a closure device.

Clearly, the Dabich reference is analogous art. Furthermore, the motivation for the obvious rejection is evidenced in Dabich, "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure of the Wittrock reference by including an additional double hinge closing mechanism that provides two interconnected lids as taught by the Dabich reference since double hinge mechanism results in opening the inner lid with one hand by most users (Dabich, col.4, lines 27-33)" as required for establishing proper prima facie case under 103.

Regarding newly added claims 27-29, see MPEP 2144.04, IV for changing in size, shape, or sequence of adding ingredients. Specifically, see in Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984). Changing the dimensions of the hinge plate does not affect its function.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reichler et al., Williams et al., Berry, Jr., Jasperson, Jr. and Tennenbaum all teach various hinge plate design dimensions.
13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
14. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 9:00-5:30.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GLADYS J. CORCORAN can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


GLADYS J. CORCORAN
SUPERVISOR, PATENT EXAMINER

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Monzer R. Chorbaji 
06/01/2006